

Message Text

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SUBJ: SRI LANKA FOREIGN INVESTMENT LAW

REF: A) COLOMBO 3643

1. SUMMARY: ACCORDING TO SENIOR GSL OFFICIAL, LONG DISCUSSED SRI LANKA FOREIGN INVESTMENT GUARANTEE/INCENTIVE LAW WILL BE PRESENTED TO CABINET AND TABLED BEFORE NATIONAL ASSEMBLY JANUARY 14. ALTHOUGH SOME OPPOSITION CAN BE EXPECTED FROM OPPOSITION LSSP AND POSSIBLY FROM SLFP LEFT, GSL HAS VOTES TO CARRY LAW AND EXPECTS SUPPORT OF RIGHT WING UNP OPPOSITION. NEW LAW IS TO ENTER EFFECT AND NEW CONSOLIDATED FOREIGN INVESTMENT AUTHORITY IS EXPECTED TO BEGIN OPERATION BY FEBRUARY. END SUMMARY.

2. ON JAN 7 EMBASSY OFFICER CALLED ON GSL EXPORT PROMOTION SECRETARIAT DIRECTOR GENERAL DR SIVALE RATWATTE (PRIME MINISTER BANDARANAIKE'S BROTHER) TO INQUIRE GENERALLY ABOUT FOREIGN INVESTMENT CLIMATE AND SPECIFICALLY ABOUT STATUS OF FOREIGN INVESTMENT LAW PROPOSED IN NOV 5, 1975 BUDGET MESSAGE BY
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FINANCE MINISTER FELIX DIAS BANDARANAIKE. EMBASSY

OFFICER EXPLAINED THAT THROUGH CHAMBER OF COMMERCE OF US, OPIC AND OTHER ORGANIZATION, OUR REPORTING ON INVESTMENT CLIMATE AND POTENTIAL WAS SOURCE OF INFO TO PROSPECTIVE AMERICAN INVESTORS. IN ADDITION, USG AGENCIES COULD ASSIST IN MATCHING SRI LANKA INVESTMENT OPPORTUNITIES WITH INTERESTED AMERICAN FIRMS.

3. RATWATTE SAID THAT NEW LAW WOULD BE FORMALLY PRESENTED TO GSL CABINET AND TABLED BEFORE NATIONAL ASSEMBLY JAN 14. LAW WILL BE STYLED FOREIGN INVESTMENT AUTHORITY LAW (FIAL), TITLE SPECIFICALLY CHOSEN AS LESS SENSITIVE POLITICALLY THAN ONE USING TERMS SUCH AS PROTECTION, GUARANTEE, INCENTIVE, ETC. RATWATTE ASIA GSL EXPECTED POLITICAL OPPOSITION AND DEBATE BUT PRIME MINISTER'S SLFP HAD SUFFICIENT VOTES TO CARRY LAW. RATWATTE SAID HE ALSO EXPECTED CONSERVATIVE OPPOSITION UNITED NATIONAL PARTY TO SUPPORT.

4. AS EXPECTED DRIVE TO STIMULATE DOMESTIC AND FOREIGN PRIVATE INVESTMENT AND NOW WIDELY ANTICIPATED ENACTMENT OF FOREIGN INVESTMENT LAW IS OPPOSED BY POLITICAL LEFT. LSSP PARTY ORGAN AND ASSOCIATED VERNACULAR PRESS HAVE ATTACKED ANY INCREASE IN FOREIGN BUSINESS AND BANKING PRESENCE. RECENT COMMUNIST PARTY/MOSCOW (CP/M) ANNUAL CONFERENCE FORMALLY OPPOSED "CAPITALIST EXPLOITATION". ETC BUT THEIR OPPOSITION TO LAW WILL BE MUTED SINCE CP/M REMAINS IN GSL COALITION. SOME OPPOSITION COULD ALSO COME FROM LEFTIST SLFP ECONOMIC MINISTERS SUCH AS T.B. SUBASINGHE (INDUSTRIES) AND T.B. ILANGARATNE (TRADE). SUBASINGHE AND HIS MINISTRY ARE WIDELY UNDERSTOOD TO HAVE BEEN UNCOOPERATIVE IN GSL'S EFFORT TO STIMULATE PRIVATE SECTOR.

5. ACCORDING TO RATWATTE, FIAL WILL PROVIDE 10-YEAR PROTECTION AGAINST NATIONALIZATION EXCEPT IN INSTANCES OF "NATIONAL SECURITY", WHICH HE DISTINGUISHED FROM LANGUAGE EARLIER PROPOSED, "NATIONAL INTEREST." THUS LIMITED OFFICIAL USE

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FIAL WILL PROTECT FOREIGN VENTURES FROM EXISTING BUSINESS ACQUISITION ACT WHICH GIVES GSL VIRTUALLY BLANKET EXPROPRIATION POWER. OTHER PROVISIONS OF LAW, WHICH WAS REVIEWED IN DETAIL BY UNCTAD EXPERTS IN DECEMBER, WILL BE SIMILAR TO EXISTING LEGISLATION IN OTHER DEVELOPING COUNTRIES. IMPORTANT POINT, HOWEVER, IS THAT FINANCE MINISTER HAS COMMITTED GSL TO REQUEST PARLIAMENTARY APPROVAL FOR EACH NEW INVESTMENT PROJECT.

RATWATTE SAID THIS PROVISION WILL BE IN LAW BUT GSL IS AWARE INVESTORS WILL REGARD IT AS IMPEDING PROJECT IMPLEMENTATION AND REQUIRING UNACCEPTABLE PUBLIC DISCLOSURES. THEREFORE, PROPOSALS WILL BE REVIEWED BY SMALL PARLIAMENTARY COMMITTEE INCLUDING LEADER OF OPPOSITION. AFTER COMMITTEE APPROVAL, PLENARY WILL PASS PROJECT PROFORMA. INCLUSION OF OPPOSITION LEADER IS TO PRECLUDE LATER CRITICISM OR EVEN TERMINATION OF INDIVIDUAL PROJECTS, ESPECIALLY SHOULD OPPOSITION BE VOTED INTO POWER.

6. IN OTHER DEVELOPMENTS AFFECTING INVESTMENT CLIMATE, FINANCE MINISTER MET IN LATE NOVEMBER WITH MEMBERSHIP OF VARIOUS PRIVATE SECTOR CHAMBERS. HE ENCOURAGED FIRMS TO INVEST AND TO EXPAND PRODUCTION BUT AFFIRMED THAT GOVT WOULD APPROVE ALL PROJECTS. HE INVITED DOMESTIC FIRMS TO PROPOSE INVESTMENTS INCLUDING ONES INVOLVING FOREIGN CAPITAL AND PARTICIPATION. ACCORDING TO NUMEROUS PRESS ARTICLES, SENIOR GSL AND CHAMBER OF COMMERCE OFFICIALS AND SEVERAL LEADING BUSINESS PEOPLE, RESPONSE HAS BEEN GOOD. ONE PRESS REPORT SAYS GSL HAS RECEIVED OVER 400 PROPOSALS WHICH WOULD EMPLOY 67,000 PERSONS. MEANWHILE, EXPORT PROMOTION SECRETARIAT HAS NEGOTIATED AGREEMENT WITH JAPANESE OVERSEAS DEVELOPMENT CORP TO PROMOTE JOINT VENTURES. GERMAN AND SINGAPORE INTERESTS HAVE NEGOTIATED EXPORT ORIENTED FISHERIES PROJECTS. ACCORDING TO PRESS, PHILIPPINE AND INDIAN FIRMS HAVE SHOWN INTEREST IN SPECIFIC PROJECTS.

7. COMMENT: DESPITE THESE POSITIVE DEVELOPMENTS GSL HAS MUCH TO DO TO ACHIEVE SUBSTANTIAL INVESTMENT GROWTH. ALTHOUGH LEGISLATION AND AUTHORITY WILL BE LIMITED OFFICIAL USE

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MAJOR IMPROVEMENT, GSL INITIATIVE AND MANAGERIAL ABILITY TO PROMOTE AND ATTRACT, EVALUATE AND NEGOTIATE INVESTMENT PROJECTS IS VERY THIN. LEFTIST POLITICAL OPPOSITION WILL CONTINUE TO BE PROBLEM FOR WESTERN INVESTORS, ESPECIALLY AMERICANS. PRESENT SITUATION, HOWEVER, PRESAGES GENUINE CHANGE IN GSL APPROACH TO PRIVATE SECTOR AND INVESTMENT WHICH COULD PROVIDE OPPORTUNITIES FOR AMERICAN INTERESTS. VAN HOLLEN

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